

Stop the Discrimination of Native Americans

August 16, 2013

TO: Ms. Elizabeth K. Appel, Acting Director
Office of Regulatory Affairs & Collaborative Action - Indian Affairs

CC: President Obama
Senator Mark Warner
Senator Tim Kaine
Congressman Scott Rigell
United States Senate Committee on Indian Affairs
Congressman Raul M. Grijalva
Congressman Don Young
Congresswoman Colleen Hanabusa
United States House of Representatives Committee on Natural Resources
Representative Markey, Committee on Natural Resources
Lee Fleming, Director of Office of Federal Acknowledgement, BIA
→ Kevin Washburn, Assistant Secretary - Indian Affairs ←

Subject: Bureau of Indian Affairs - A Preliminary Discussion Draft (Red Lined PROPOSED Version)
- 25 CFR Part 83 Procedures for Establishing that American Indian Group Exists as an Indian Tribe

Reference: My letter proposing changes to 83.7, dated May 15, 2013, and my July 3, 2013 letter, same subject.

Gentlemen,

We really appreciate the extension given to the comment period on subject, thank you.

Clarification to several of our requested changes to recognition rules are shown below:

1. The percentages (XX's) should be eliminated, unless the exact methodology can be stated clearly and concisely, charted and tested, to ensure it is not subjective, discriminatory, or arbitrary, and is reasonable.
2. Since the purpose given to the House Oversight Committee is to simplify and streamline the recognition rules, to make recognition a fair and reasonable process, all vague and subjective wording should be completely removed from the recognition rules.

Shown below are some additional suggestions to improve the recognition rules and processes:

1. Retain the Intent to Petition as the preliminary step of the determination process and add a 80 days for the tribe to submit or be dropped. (The rubric draft drops this segment entirely and goes straight to submission of a fully documented petition. There is no opportunity for tribes to establish a priority order number for their petition review.)
2. Replace separatist terms: Recognized Tribe and non federal Group with: Recognized Tribe and Unrecognized Tribe. It is divisive and improper for the BIA to disallow a tribe in any status the right to call themselves a tribe. On the other hand if that tribe does not meet federal eligibility criteria it is not improper to say that a tribe is not eligible for federal recognition.

3. We suggest a **new approach** to the system of reviewing petitions. Currently it is flawed in the hands of line bureaucrats absent understanding of diverse Indian cultural traits and histories. Hearings and findings must be brought out from behind the BIA black curtain and a lone, line bureaucrat deciding who is and who is not a federally eligible Indian tribe.

Our recommendation is a six member team of jurors. The composition would be: (political, anthropological, BIA, Religious/Spiritual, federal judge and one citizen selected by the tribe whose petition is being heard.

We envision building a National list of **University Chair level Anthropological experts** with backgrounds in the culture, history, language and general nature of the petition being heard. Tribes would be able to select an Anthropologist of their choice to chair and decide on their case. Next, the tribe being heard could name **one citizen** of any standing (save criminal jail status) to sit and participate with appropriate input. The **judicial member** should be a federal Indian Judge, the **legislative** would be either the state legislator or state attorney general, or state governor, the **religious leader** would be rotated between Christian denominations. Finally, a political **BIA representative**, appointed by the BIA. Hearings should be run as in any legal matter evidence, input and questions and answers by the representative from the Tribe who will be defending the tribe's petition but not at the table. Evaluative Hearings must be open to the public and press.

Determination Hearings must be held outside of Washington DC in the state of residence of the petitioning tribe. As in any court setting and decision, appeals are to be accepted under existing due process rules.

We honestly believe we need to get the review process out of DC and BIA's unilateral control, and let BIA do what it does best, which is help the recognized tribes.

Thank you for your efforts to **simplify** and **streamline** the Federal recognition rules and process.

PLEASE simplify and expedite the approval process. It should not take tens of years and many thousands of dollars when Federal historical records exist. Also, the unrecognized tribes are poor and struggling, marked by years of discrimination by the Federal Gov't as well as other recognized tribes.

Please provide a written or email reply to the specifics of my proposals, and what if any will be considered and implemented, as soon as possible.

Respectfully,



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